Dr Ismail bin Abdul Hamid & Anor v Dr Mohd Khairy bin Yakub & Ors

HIGH COURT (KUALA LUMPUR) — SUIT NO S-22–7 OF 2007
SITI KHADIJAH JC
4 SEPTEMBER 2012

Administrative Law — Declaration — Disciplinary inquiries — Medical practitioner — Preliminary Investigation Committee ('PIC') of fourth defendant — Complaints against medical practitioner registered with Malaysian Medical Council — Plaintiffs claimed that proceeding before PIC declared null and void — Whether declaration sought premature — Medical Act 1971 s 31 — Medical Regulations 1974

Civil Procedure — Pleadings — Conspiracy — Allegation of — Defendants conspired to injure plaintiffs' practice — Particular facts of agreement by defendants to conspire to injure plaintiffs — Whether sufficiently pleaded

Tort — Conspiracy — Allegation of — Defendants conspiring to cause damage to plaintiffs' medical practice — Whether established — Whether evidence sufficient to prove agreement by defendants conspiring to injure plaintiffs

The first plaintiff was a cardio-thoracic surgeon while his wife, the second plaintiff, was an anaesthetist. At the material time, they formed a company called Andalas Medical Centre Sdn Bhd which operated as Andalas Medical Centre at Andalas, Klang ('AMC') with the plaintiffs as the directors of the said company. The first and third defendants are also medical doctors attached to the Ministry of Health ('MOH'). They were the secretary and assistant secretary of the fourth defendant, respectively. The fourth defendant ie Malaysian Medical Council ('MMC') is a regulatory body established pursuant to the Medical Act 1971 ('Act'). The second defendant, an ex-radiographer from the General Hospital Kuala Lumpur, was an officer in the licensing division of the MOH and at all material time was acting as the deputy director of the Engineering Division of MOH. The plaintiffs alleged that the first, second and third defendants had collectively conspired to injure the plaintiffs by manipulating the fourth defendant to oust them from the medical profession as doctors. According to the pleadings and facts as enumerated by the plaintiffs, at that point in time when University Institute Technology Mara ('UITM') had set up a nursing school, AMC gave out scholarships to 13 of its nurses. Vide an agreement between the plaintiffs and UITM, UITM was to

recruit medical specialists from India whose salaries would be paid by the plaintiffs who would also be responsible in the purchase of all necessary equipments. The recruited specialists then arrived and were helping the ITM students and setting up their various departments at AMC. The plaintiffs claimed that the problems started due to pressure from MMC through the first defendant. The first defendant had alleged that the agreement between UITM and AMC could not be allowed to continue. Ultimately, the said program had to be called off and the doctors repatriated. As a result of this, the plaintiff had suffered tremendous financial loss and hardship and it was at this time that Bank Pembangunan who financed the setting up of AMC sent receivers and managers to take over AMC. Due to the receivers and managers inefficiency in managing a hospital in receivership, the officers from MOH raided AMC's Radiology Department. The first plaintiff was then charged at the Klang Sessions Court for operating a radiology machine without a license. He was however found not guilty, acquitted and discharged. Apart from these, there were three complaints against the plaintiffs, each of the complaints alleging misconduct leading to three separate inquiries conducted against them by MMC. The first complaint against the two plaintiffs had been withdrawn. The other two inquiries by the Preliminary Investigation Committee ('PIC') related to the second and third complaints are still ongoing and pending. As a result of all these, the plaintiffs had suffered losses and hence, sought damages and also an injunction against MMC from continuing the disciplinary inquiries until the disposal of the action. The following issues were raised for the determination of this court namely, (i) whether there was a conspiracy by the defendants to injure the profession of the plaintiffs; (ii) whether the plaintiffs had pleaded sufficiently in a case of this nature; (iii) whether the court should allow the plaintiffs' claim that the entire proceeding before the PIC of the fourth defendant pertaining to the three complaints against them be declared null and void for failure to adhere to the Medical Regulations 1974 ('Regulations').

Held, dismissing the plaintiffs' claim with no order as to costs:

(1) The fourth defendant is empowered by the Act and the Regulations to commence disciplinary inquiries into complaints made against any medical practitioner registered with it. It is a statutory body created under the Act and has its own duties and functions, which do not involve the MOH's decision to raid the centre. There was no proof to show that the MOH had consulted the fourth defendant before raiding the centre. There was nothing to show that MOH had acted in concert with MMC when they raided AMC or when the first plaintiff was charged at the Klang Court (see para 17).

(2) The plaintiffs had failed to provide direct evidence sufficient to prove an agreement by the defendants to conspire to injure them. There was no factual basis to support the inference that there was any agreement in any

form between the defendants or any two of them with the common intention of unlawfully interfering with and causing damage to the plaintiffs medical practice, whether by way of inquiries, the raid or even the Klang Court matter. Thus, the plaintiffs had failed to discharge their burden of proving the case (see para 20).

(3) On perusal of the pleadings, the plaintiffs had failed to plead sufficiently and with clarity the particular facts of the agreement by the defendants to conspire to injure the plaintiffs (see para 22).

(4) It is specifically provided for under Part IV of the Act and the Regulations that the fourth defendant is empowered to commence disciplinary inquiries into complaints made against any medical practitioner registered with MMC. Section 31 of the same Act provides a statutory guarantee of the right for the aggrieved medical practitioner to appeal to the High Court against the said decision of MMC in the exercise of its disciplinary jurisdiction. In this aspect, it was premature at this juncture for the plaintiffs to ask for such a declaration from the court (see para 23).

[Bahasa Malaysia summary

Plaintif pertama merupakan pakar bedah kardiovaskular sementara isterinya, plaintif kedua, merupakan pakar bius. Pada masa matan, mereka telah menubuhkan sebuah syarikat bernama Andalas Medical Centre Sdn Bhd yang beroperasi sebagai Andalas Medical Centre di Andalas, Klang ('AMC') dengan plaintif-plaintif sebagai pengarah-pengarah bagi syarikat tersebut. Defendan pertama dan ketiga juga merupakan doktor-doktor perubatan yang terikat dengan Kementerian Kesihatan ('KK'). Mereka masing-masing merupakan setiausaha dan pembantu setiausaha kepada defendan keempat. Defendan keempat iaitu Jawatankuasa Perubatan Malaysia ('JPM') adalah sebuah badan kawal selia yang ditubuhkan mengikut Akta Perubatan 1971 ('Akta'). Defendan kedua, bekas jururadiograf daripada Hospital Besar Kuala Lumpur, merupakan pegawai di dalam bahagian perlesenan JPM dan pada setiap masa matan bertindak sebagai timbalan pengarah Jabatan Kejuruteraan JPM. Plaintif-plaintif mendakwa bahawa defendan pertama, kedua dan ketiga telah secara kolektif berkomplot untuk menjejaskan plaintif-plaintif dengan memanipulasi defendan keempat untuk menyingkirkan mereka daripada profesion sebagai doktor. Menurut pliding-pliding dan fakta-fakta seperti disenaraikan oleh plaintif-plaintif, pada masa tersebut semasa Universiti Institut Teknologi Mara ('UITM') telah menubuhkan sekolah kejururawatan, AMC telah memberikan biasiswa kepada 13 orang jururawatnya. Melalui perjanjian antara plaintif-plaintif dan UITM, UITM telah merekrut pakar perubatan daripada India yang mana gajinya akan dibayar oleh plaintif-plaintif yang juga akan bertanggungjawab dalam membeli kesemua peralatan-peralatan yang diperlukan. Pakar-pakar yang direkrut kemudian tiba dan telah membantu pelajar-pelajar UITM dan menubuhkan pelbagai jabatan mereka di AMC. Plaintif-plaintif mendakwa bahawa masalah timbul akibat

tekanan daripada JPM melalui defendan pertama. Defendan pertama telah mendakwa bahawa perjanjian antara UITM dan AMC tidak dibenarkan untuk diteruskan. Akhirnya, program tersebut terpaksa dibatalkan dan doktor-doktor tersebut telah dihantar pulang. Akibatnya, plaintif-plaintif telah mengalami kerugian kewangan yang sangat besar dan kesusahan dan pada masa tersebut Bank Pembangunan yang telah membiayai penubuhan AMC menghantar penerima dan pengurus untuk mengambil alih AMC. Oleh kerana penerima dan pengurus tidak efisien dalam menguruskan sebuah hospital yang telah diterima, pegawai-pegawai KK telah menyerbu Jabatan Radiologi AMC. Plaintif pertama kemudian telah dituduh di Mahkamah Sesyen Klang dengan mengoperasikan mesin radiologi tanpa sebarang lesen. Walau bagaimanapun, dia tidak didapati bersalah, dibebaskan dan dilepaskan. Selain daripada itu, terdapat tiga aduan terhadap plaintif-plaintif, setiap aduan mendakwa salah laku yang membawa kepada tiga soal siasat yang berbeza yang dijalankan terhadap mereka oleh AMC. Aduan pertama terhadap kedua-dua plaintif telah ditarik semula. Dua soal siasat yang lain oleh Jawatankuasa Siasatan Awalan ('JSA') berkenaan dengan aduan kedua dan ketiga masih lagi diteruskan dan tertangguh. Akibat daripada semua ini, plaintif-plaintif telah mengalami kerugian dan justeru, memohon ganti rugi dan juga injunksi terhadap JPM daripada meneruskan soal siasat disiplin sehingga tindakan dilucut. Isu-isu berikut telah dibangkitkan untuk penentuan mahkamah ini iaitu (i) sama ada terdapat konspirasi oleh defendan-defendan untuk menjejaskan profesion plaintif-plaintif; (iii) sama ada plaintif-plaintif telah memplid secukupnya di dalam kes bersifat sedemikian; (ii) sama ada mahkamah sepatutnya membenarkan dakwaan plaintif-plaintif bahawa keseluruhan prosiding dihadapan JSA defendan keempat berkenaan dengan ketiga-tiga aduan terhadap mereka diisytiharkan sebagai batal dan tidak sah kerana kegagalan untuk mematuhi Peraturan-Peraturan Perubatan 1974 ('Peraturan-Peraturan').

Diputuskan, menolak tuntutan plaintif-plaintif dengan tiada perintah terhadap kos:

(1) Defendan keempat diberi kuasa oleh Akta dan Peraturan-Peraturan untuk memulakan soal siasat disiplin terhadap aduan yang dibuat terhadap mana-mana pengamal perubatan yang berdaftar dengannya. Ia merupakan badan statutori yang ditubuhkan di bawah Akta dan mempunyai tanggungjawab dan fungsinya sendiri, yang mana tidak melibatkan keputusan KK untuk menyerbu pusat tersebut. Tidak terdapat sebarang bukti untuk menunjukkan bahawa KK telah berunding dengan defendan keempat sebelum menyerbu pusat tersebut. Tiada apa-apa menunjukkan bahawa KK telah bertindak dengan persetujuan JPM apabila mereka menyerbu AMC atau apabila plaintif pertama dituduh di Mahkamah Klang (lihat perenggan 17).

(2) Plaintif-plaintif gagal untuk memberikan keterangan jelas yang

mencukupi untuk membuktikan perjanjian oleh defendan-defendan untuk berkomplot untuk menjejaskan profesion mereka. Tidak terdapat asas fakta untuk menyokong inferens bahawa terdapat apa-apa perjanjian dalam apa-apa bentuk antara defendan-defendan atau salah satu daripada mereka mempunyai niat sama untuk campur tangan dengan tidak sah dan menyebabkan kerugian kepada amalan perubatan plaintif-plaintif, sama ada melalui soal siasat, penyerbuan atau perkara Mahkamah Klang. Justeru, plaintif-plaintif gagal untuk melepaskan beban membuktikan kes tersebut (lihat perenggan 20).

(3) Dalam menyemak pliding-pliding, plaintif-plaintif telah gagal memplid dengan mencukupi dan dengan jelas butir-butir fakta perjanjian oleh defendan-defendan untuk berkonspirasi untuk menjejaskan plaintif-plaintif (lihat perenggan 22).

(4) Adalah diperuntukkan dengan spesifik di bawah Bahagian IV Akta dan Peraturan-Peraturan bahawa defendan keempat telah diberi kuasa untuk memulakan soal siasat disiplin terhadap aduan yang dibuat terhadap mana-mana pengamal perubatan yang didaftarkan dengan JPM. Seksyen 31 Akta memperuntukkan jaminan statutori hak bagi pengamal perubatan yang terkilan untuk membuat rayuan kepada Mahkamah Tinggi terhadap keputusan JPM dalam melaksanakan bidang kuasa disiplinnya. Dalam aspek ini, adalah pra matang pada ketika ini bagi plaintif-plaintif untuk meminta deklarasi tersebut daripada mahkamah (lihat perenggan 23).]

Cases referred to

Mohd Hussain Umar Kochra v I S Dalipsinghji AIR 1970 SC 45, SC (refd)

Quill Construction Sdn Bhd v Tan Hor Teng & Anor [2006] MLJU 120; [2006] 2 CLJ 358, HC (refd)

SV Beverages Holdings Sdn Bhd & Ors v Kickapoo (M) Sdn Bhd [2008] 4 MLJ 187; [2008] 4 CLJ 20, CA (refd)

Legislation referred to

Atomic Energy Licensing Act 1984
Evidence Act 1950 s 103
Medical Act 1971 s 30
Medical Regulations 1974 regs 26, 27, 28, 29, 29(3), (4)(b), 31

SN Sakthy Vell (Arnold Andrew & Co) for the plaintiffs.
Yau Her Lerk (Rozanahah bt Juisin with him) (Shahrizat Rashid & Lee) for the first, third and fourth defendants.
Habibah bt Haron (Kasturi a/p Arumugam with her) (Attorney General's Chambers) for the second defendant.

Siti Khadijah JC:

[1] The first and second plaintiffs (Dr Mohd Ismail bin Abdul Hamid and his spouse Dr Marzida bt Mansor) are medical doctors registered with and licensed by the Malaysian Medical Council ('MMC'). The first and third defendants (Dr Mohd Khairy bin Yakub and Dr Karen Sharmini Sandasamy) are also medical doctors attached to the Ministry of Health ('MOH') who were the secretary and assistant secretary of the four defendant respectively. The fourth defendant ie MMC is the regulatory body established by statute under the purview of the Medical Act 1971. The second defendant ('Peter Lee'), an ex-radiographer from the General Hospital Kuala Lumpur was an officer in the Licensing Division of the Ministry of Health (MOH) and at all material time was acting as the deputy director of the Engineering Division of MOH. At the trial both the plaintiffs appeared as witnesses for the plaintiffs namely 'PW1' and 'PW2'. The first, third and fourth defendants produced three witnesses namely the first ('DW1' — 'D1', 'D3', 'D4') and third ('DW3' — 'D1', 'D3', 'D4') defendants themselves together with one Dr Wan Mazlan bin Mohd Woojdy ('DW2' — 'D1','D3','D4'). The second defendant himself appeared as the second defendant's only witness as DW1–D2.

FACTS OF THE CASE

[2] The first plaintiff is a cardio-thoracic surgeon while his wife the second plaintiff is an anaesthetist. At the material time they formed a company called Andalas Medical Centre Sdn Bhd which operated as Andalas Medical Centre at Andalas, Klang ('AMC') and was managed by and controlled by AMC Sdn Bhd whose two directors were the plaintiffs. According to the plaintiffs they were successful until the time when bureaucratic manipulations had caused them professional hardship and misery. They adduced evidence to show how the first, second and third defendants had collectively conspired to injure them by manipulating the fourth defendant to oust them from the medical profession as doctors.

[3] According to the pleadings and facts as enumerated by the plaintiffs at that point in time when University Institute Technology Mara, ('UITM') had set up a nursing school AMC gave out scholarships to 13 of its nurses. As UITM did not have sufficiently adequate qualified lecturers the nurses were poorly trained and 12 of the scholarship holders failed in the finals. Following this the dean of UITM had asked the plaintiffs to help to which the plaintiffs responded positively. In an agreement between them the arrangement was for UITM to recruit medical specialists from India whose salaries would be paid by the plaintiffs who would also be responsible in the purchase of all necessary equipments. All other aspects of the said specialists' entry into Malaysia namely

immigration matters and the necessary procedures regarding registration of the said specialists with the MMC were to be attended to by UITM. A

[4] The recruited specialists then arrived and were helping the UITM students and setting up their various departments at AMC. At the same time plaintiffs were chasing UITM to obtain the necessary registration of the specialists with the fourth defendant. Everything was working fine until the rector of ITM called the first plaintiff and complained that the fourth defendant was pressurising UITM to drop the said program. The plaintiffs claim problems started due to pressure from MMC through the first defendant who represented the fourth defendant at meetings held by MMC. According to the plaintiffs the first defendant had said the agreement between UITM and AMC cannot be allowed to continue. Ultimately the said program had to be called off and the doctors repatriated. The plaintiffs claim as a result of what happened they suffered tremendous financial loss and hardship and it was at this time that Bank Pembangunan who financed the setting up of AMC sent receivers and managers (Wong & Associates) to take over AMC. B C D

[5] According to the plaintiffs after two months the receivers and managers abruptly withdrew, leaving the plaintiffs in the lurch for the next six months unable to carry on business since all of AMC's accounts had been frozen in lieu of the appointment of the receivers and managers. It was more than a year later, with the consent of the bank that a company called Takzim Ikhlas Sdn Bhd was formed and ran AMC. However an unsecured creditor managed to wind up AMC Sdn Bhd and the plaintiffs claim it was during this time that officers from MOH raided AMC's radiology department. According to the plaintiffs this was attributed to by the inefficiency of the receivers and managers who did not know how to manage a hospital in receivership. The first plaintiff was then charged at the Klang Sessions Court for operating a radiology machine without a license. It was during the appearance in court for this matter that the second defendant had advised the first plaintiff to plead guilty. Only for the timely advice of his counsel that the first plaintiff retracted his plea, the case proceeded to trial and the plaintiff was later found not guilty, acquitted and discharged. E F G

[6] Apart from these there were three complaints against the first and the second plaintiffs, each of the complaint alleging misconduct leading to three separate inquiries being conducted against them by MMC. As regards the first complaint against the second plaintiff it is a mandatory requirement to enable admission for a post graduate training for a doctor to obtain a certificate of good standing ('CGS') to be issued by MMC but when the second plaintiff reapplied for another CGS after the first one expired she was told by MMC that since there was a complaint against her MMC could not issue the certificate until investigations completed. It was only on 22 September 2005 that the said letter of the first complaint dated 10 February 2001 was faxed to the plaintiffs' H I

clinic and the inquiry was fixed for hearing on the next day which later and only on request made by the plaintiffs was it adjourned to 18 November 2005. The first defendant admitted in his evidence that it took almost four years to notify the plaintiffs and to form a preliminary investigation committee ('PIC') to enquire into the matter. As the complainant failed to turn up on the date of hearing of the inquiry, pursuant to reg 29(3) of the Medical Regulations 1974 the matter could not proceed further. It is to be noted that there is no documents in the court file to show that the decision of the fourth defendant had been communicated to the plaintiffs, not until the filing of this action by a letter dated 22 January 2007.

[7] As to the second complaint according to the first plaintiff though the medical needs of the complainant was attended to by a locum at AMC ie by an orthopaedic surgeon by the name of Sham, the first plaintiff, following the surgeon's order in the post-operative notes only removed the screws that fixed the complainant's fracture which could be done by any doctor. Later the complainant's application to be medically boarded out was dismissed on the grounds that he was completely fit, had no handicap and fit to return to work. However Dr Lim Boon Ping, an orthopaedic surgeon at the SJMC who saw him later concluded that the patient's leg had been fused in an 'L' shape. Based on this view the complainant had complained to MMC that the first plaintiff who was not an orthopaedic surgeon had performed the operation and fixed the complainant's ankle. On this complaint the first plaintiff takes objection that he was charged pursuant to reg 29(4)(b) of the Medical Regulations 1974 without taking Dr Lim Boon Ping's evidence to support the allegations but was solely based on the second complainant's evidence. This court observes that the inquiry for this matter is still pending and have not been completed at the PIC stage.

[8] The third complaint was by the Consumers' Association of Penang to MOH that AMC in Klang had been operating illegally for the period of two years and requested the minister to look into the matter. Once again the second defendant organised a raid at AMC where a Burmese Dr Than Lin was arrested and charged. On his plea of guilty Dr Than was sentenced and later deported. According to the first plaintiff though this complaint was related to the employment of the Burmese doctor at the hospital, the hospital was then in receivership and despite not mentioning the plaintiff's name the first plaintiff was called to face the charge. It is the plaintiffs' case that they had nothing to do with Takzim Ikhlas Sdn Bhd and had never been the directors or owner of this company at anytime whatsoever.

[9] On the above matter the defence's witnesses admitted that Dr Than Lin was employed by Takzim Ikhlas Sdn Bhd (marked P6 by PIC). The first plaintiff also gave evidence that he and his wife ceased to be directors of AMC

Sdn Bhd with effect from 10 May 2001. On this point the first plaintiff submits that there was nothing concrete before PIC to establish that AMC was under the control and care of the first plaintiff at the material time. Apart from these the plaintiff raises many other issues pertaining to non-compliance of the Medical Act 1971 and Regulations 1974 by PIC and claims that the hearings conducted were unfair and ought to be declared null and void. The plaintiffs submit that none of the complaints could stick in particular the third complaint. It is however noted by this court that to date the third complaint is also pending and have not been completed at the PIC stage.

[10] According to the plaintiffs the constant harassment by the defendants had prompted him to sell his clinic and joined University of Malaya as a senior lecturer. In 2006 hardly a month after his appointment by the Public Services Commission as a consultant cardiac surgeon at Kuching General Hospital the first plaintiff was transferred out from the Cardiac Thoracic Unit to General Surgery. The first plaintiff also informs the court that on his application for an APC specifically stating his principal place of practice at Klinik Mutiara, 40A Jalan Senurai, Taman Desa Utama, Klang 41200, Selangor together with the required fee, he was however issued an APC with the address of practice deliberately wrongly stated and the receipt accompanying it issued in the name of one Narjit Singh & Dhaliwal and the Form 11 that the first plaintiff had filled up and sent to the fourth defendant bearing the correct place of practice was returned with a hand written note that 'APC sudah dihantar 1021/06 Andalas Medical Centre'.

[11] The plaintiffs claim as a result of all these they have suffered losses. They are seeking damages, and also injunction against MMC from continuing the disciplinary inquiries until the disposal of this action. The defendants have denied all the allegations against them. According to the first, third and fourth defendants, upon receiving complaints against any medical doctors registered with the fourth defendant, a preliminary investigation inquiry would be carried out. This is carried out by the PIC pursuant to regs 26–29 of the Medical Regulations 1974. After the PIC has conducted its investigations, the PIC can recommend to the council itself (the fourth defendant) to hold an inquiry pursuant to reg 29 of the Medical Regulations 1974. In the event the PIC recommends for an inquiry to be held, the council has to do so according to reg 31 of the Medical Regulations 1974. The council would then hear the matter and if the doctor is found guilty of the offence charged the council is able to impose the appropriate punishment pursuant to s 30 of the Medical Act 1971.

[12] According to the first, third and fourth defendants, the inquiry for the first complaint against the two plaintiffs had been withdrawn due to the complainant's absence and the plaintiffs have been informed (though denied

by the plaintiffs) that the fourth defendant will recommend not to proceed any further against the both plaintiffs on the first charge. The other two inquiries by the PIC relating to the second and the third complaints are still ongoing and pending. The second defendant's defence is that he was at all material time acting under a lawful duty as the deputy director of the Engineering Division of MOH and his duty was to enforce the Atomic Energy Licensing Act 1984 via licensing, examination process and enforcement activities. According to the second defendant the failure of the first plaintiff to adhere to the requirement of the law was the primary and the only cause on the non-issuance of the licence to the plaintiff.

ISSUES BEFORE THE COURT

(a) whether there was a conspiracy by the defendants to injure the profession of the plaintiffs;

(b) whether the plaintiffs have pleaded sufficiently in a case of this nature; and

(c) whether the court should allow the plaintiffs' claim that the entire proceeding before the PIC of the fourth defendant pertaining to the three complaints against them be declared null and void for failure to adhere to the Medical Regulation 1974.

THE COURTS FINDINGS

Whether there was a conspiracy to injure the profession of the two doctors ie the plaintiffs

[13] In *Mohd Hussain Umar Kochra v I S Dalipsinghji* AIR 1970 SC 45 the Indian Supreme Court explains the offence of conspiracy as follows:

> The agreement is the gist of the offence. In order to constitute a general conspiracy there must be common design and a common intention of all to work in furtherance of the common design. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a general conspiracy though he may not know all its secret or the means by which the common purpose is to be accomplished. The evil scheme may be promoted by a few, some may drop out and some may join at a later stage, but the conspiracy continues until it is broken up. The conspiracy may develop in successive stages. There may be a general plan to accomplish a common design by such means as may from time to time be found expedient. New techniques may be invented and new means may be devised for the advancement of the common plan. A general conspiracy must be distinguished from a number of separate conspiracies having a similar general purpose. Where different group of person co-operate towards their separate ends without any privity with each other, each combination constitutes a

separate conspiracy. The common intention of the conspirators then is to work for the furtherance of the common design of his group only.

[14] In *Quill Construction Sdn Bhd v Tan Hor Teng & Anor* [2006] MLJU 120; [2006] 2 CLJ 358 where at p 374 His Lordship James Foong J (as he was then) held:

> The tort of conspiracy consists of an agreement by two or more to do an unlawful act or to do a lawful act by unlawful means — see *Clerk & Lindsell on Torts*, (17th Ed), at paras 23–76. To succeed in this cause of action three essential ingredients must be proved:
>
> (a) there must be an agreement between two or more persons;
>
> (b) the agreement must be for the purpose of injuring the plaintiff; and
>
> (c) the act or acts done in execution of that agreement resulted in damage to the plaintiff — see *Lonrho Ltd v Fayed* [1991] All ER 303.

[15] The Court of Appeal in *SV Beverages Holdings Sdn Bhd & Ors v Kickapoo (M) Sdn Bhd* [2008] 4 MLJ 187; [2008] 4 CLJ 20 held at para 18:

> In the tort of conspiracy, there must be an agreement or combination of two or more with the common intention to effect an unlawful purpose or to do a lawful act by unlawful means resulting in damages to the plaintiff (*Industrial Concrete Products Bhd v Concrete Engineering Products Bhd & Other Suits* [2001] 8 CLJ 262, *Mulcahy v R* (1868) LR 3 HL 306 at p 317 and *Belmont Finance v Williams Furniture (No 2)* [1980] 1 All ER 393 at p 403).

[16] In the same case at para 22 the Court of Appeal went on and held as follows:

> Similarly, regarding conspiracy, in the absence of direct evidence, the question is whether the united effect of all those facts can provide a strong enough basis to support the inference that there must have been an agreement between the appellants or any two of them with the common intention of unlawfully interfering with and causing damages to the respondent's business. The totality of the evidence appears to fall short of supporting the aforesaid inferences.

[17] Reverting to the plaintiffs' claim and matters in issue which this court have to decide, from the evidence it is clear that the fourth defendant is empowered by the Medical Act 1971 and the Medical Regulations 1974 to commence disciplinary inquiries into complaints made against any medical practitioner registered with it. It is a statutory body created under the Act and has its own duties and functions, which do not involve the MOH's decision to raid the centre. There is no proof to show that the MOH had consulted the fourth defendant before raiding the centre. There is nothing to show that

MOH had acted in concert with MMC when they raided AMC or when the first plaintiff was charged at the Klang Court.

[18] The calling of the third defendant as a witness that represented MMC to prove that the first plaintiff was a registered doctor with MMC when the offence he was charged with was committed is not sufficient to show to the court that MMC was acting in collision with MOH in a conspiracy to injure the plaintiff. From the eyes of the law it is a normal procedure in prosecution when it was conducted the way it did by MOH. From the evidence it is also clear to this court that the first, third and fourth defendants were not involved in the approval process of the licence for the plaintiffs. As to the non-issuance of the licence by the second defendant it surfaces from evidence that the plaintiffs' application did not meet the requirement of documents, he also failed to pay the processing and licence fee amounting to RM3,450 for the renewal process, and therefore did not comply with the requirements under the Atomic Energy Licensing Act 1984.

[19] As to the weight to be attached to the first plaintiff's evidence about certain incidents involving certain names for example about the rector of ITM having called him to complain that the fourth defendant was pressuring ITM to drop their program and whose pressure was channelled through the first defendant who represented the fourth defendant at meetings held by MMC, it is incumbent upon the first plaintiff to produce the said rector to testify as to the truth of the allegation. While it is understandably extremely difficult for the plaintiff to secure the attendance of the rector to declare in court what he had told the first plaintiff in private (more so if told in confidence) it is still the requirement of the law of evidence particularly s 103 of the Evidence Act 1950 that he who alleges must prove the allegation, which the first plaintiff fails to comply.

[20] At this juncture and on reflection of all the evidence available before this court it is clear that the plaintiffs have failed to provide direct evidence sufficient to prove an agreement by the defendants to conspire to injure them. This court cannot find any factual basis to support the inference that there was any agreement in any form between the defendants or any two of them with the common intention of unlawfully interfering with and causing damage to the plaintiffs medical practice, whether by way of inquiries, the raid or even the Klang Court matter.

[21] All these lead to the finding of this court that the plaintiffs fail to show that the defendants were working together in an agreement committing an unlawful act by lawful means, or even by unlawful means in furtherance of the said conspiracy as claimed by the plaintiffs which resulted in loss and damage to them. In conclusion this court finds that the plaintiffs have failed to

discharge their burden of proving the case.

Whether the plaintiffs have pleaded sufficiently in a case of this nature

[22] The defendants submit on its principle — see Bullen & Leake & Jacobs on '*Precedents of Pleadings*' (13th Ed), at p 221 as follows:

> Pleadings. The gist of the tort of conspiracy is not the conspiratorial agreement to injure alone, but that agreement plus the overt acts causing damage (*Marrinan v Vibart* [1963] 1 QB 234, *affirmed* [1963] 1 QB 528). The statement of claim should describe who the several parties to the conspiracy are and their relationship with each other. It should allege the conspiracy between the defendants giving the best particulars it can of the dates when or dates between which the unlawful conspiracy was entered into or continued, and the intent to injure …: there is no call for a general plea of 'acting wrongly and maliciously' (*Sorrel v Smith* [1952] AC 700, at p 714) nor is that sufficient. It should state precisely the objects and means of the alleged conspiracy to injure and the overt acts which are alleged to have been done by each of the alleged conspirators in pursuance of the conspiracy, and lastly, the injury and damage occasioned to the plaintiff thereby.

On perusal of the pleadings it is observed by this court that the plaintiffs have failed to plead sufficiently and with clarity the particular facts of the agreement by the defendants to conspire to injure the plaintiffs.

Whether the court should allow the plaintiffs' claim that the entire proceeding before the PIC of the fourth defendant pertaining to the three complaints against them be declared null and void for failure to adhere to the Medical Regulations 1974

[23] It is specifically provided for under Part IV of the Medical Act 1971 and the Medical Regulations 1974 that the fourth defendant is empowered to commence disciplinary inquiries into complaints made against any medical practitioner registered with MMC. Section 31 of the same Act provides a statutory guarantee of the right for the aggrieved medical practitioner to appeal to the High Court against the said decision of MMC in the exercise of its disciplinary jurisdiction. In this aspect this court is of the view that it is premature at this juncture for the plaintiffs to ask for such a declaration from this court.

[24] For the above reasons and on a balance of probabilities this court finds that the plaintiffs have failed to prove their claim against the defendants. The plaintiffs' claim is therefore dismissed with no order as to cost.

Plaintiffs' claim dismissed with no order as to costs.

Reported by Ashgar Ali Mohamad Ali